THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.21457 OF 2006

18th October, 2006.

Between:

Katta Suri Babu .. Petitioner.

And

1. The Assistant Divisional Engineer (Settlement),
East Coast Railway, Waltair Division,
Visakhapatnam, and 3 others. .. Respondents

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WRIT PETITION No.21457 OF 2006

ORDER :

This writ petition is filed seeking a Certiorari to call for the records relating to the order dated 30-2-2005 in A.S.No.38 of 2004 on the file of the II-Addl. District Judge, Visakhapatnam confirming the order of eviction dated 24-2-2004 passed by the Estate Officer, East Coast Railway, Waltair Division, Visakhapatnam under Section 5 (1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and to quash the same.

The facts, in brief, are as under :

The land measuring Ac.0-40 cents located in Thatichetlapalem, Visakhapatnam in S.No.6/1/D2, Dondaparthi Village, Visakhapatnam has been in occupation of 42 persons, each person being in occupation of 15 x10 sq.ft. land. On a report made by the Assistant Divisional Engineer (Settlement), South Eastern Railway, Visakhapatnam stating that the said land forming part of Ac.0-85 cents which was acquired by the Railway Administration in the year 1967, was unauthorisedly and illegally occupied by 42 persons and they have been continuing in possession illegally from February, 1993, the Estate Officer, East-coast Railway, Waltair Division, Visakhapatnam initiated eviction proceedings against the said occupants under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short, 'the Act'). Accordingly, E.C.Nos.1 of 2001 to 42 of 2001 on the file of the Estate Officer, East Coast Railways, Waltair were registered and a notice under Section 4 of the Act, dated 29-10-2001 was served on all the occupants, including the writ petitioner calling upon them to show-cause as to why an order of eviction should not be made

against them. The petitioner as well as other occupants submitted their explanation dated 30-4-2002 contending that the land under their occupation does not belong to Railways, but the same belongs to Municipal Corporation. It was claimed that the Municipal Corporation, Visakhapatnam, having declared the said locality as slum area, collected Rs.361/- from them towards contribution of membership for its UCD Programme. All of them have been in occupation of the land in question for the last more than 30 years having constructed pucca houses to which power supply was also provided. Door numbers were given to their houses and they were also enrolled in the voters list and the District Revenue Authorities had issued Ration-cards. The Railways as well as the petitioner and other occupants produced evidence both oral and documentary before the Estate Officer in support of their respective claims. On appreciation of the material on record as well as material produced by both the parties and after hearing them, the Estate Officer, by a common order, dated 24-2-2004, held that the land in question belongs to Railways and ordered all the said 42 persons who are unauthorised and illegal occupants are liable to be evicted. Accordingly, in exercise of powers conferred under sub-section (1) of Section 5 of the Act, all the persons in occupation, including the writ petitioner were directed to vacate the premises in their occupation within 15 days from the publication of the order. Aggrieved by the said common order passed by the Estate Officer, dated 24-2-2004, separate appeals have been preferred by the occupants under Section 9 (1) of the Act. So far as the petitioner herein is concerned, his appeal was registered as A.S.No.38 of 2004 on the file of the Court of the II-Addl. District Judge, Visakhapatnam. On re-appreciation of the material on record, the learned Additional District Judge, by order dated 30-9-2005, confirmed the findings recorded by the Estate Officer and dismissed the appeal, thereby directing the petitioner to vacate the schedule premises within one month. The said order is under challenge in this writ petition.

The petitioner contended that the findings recorded by the Estate Officer as confirmed by the learned Additional District Judge are erroneous and unsustainable. It is contended that, on the basis of the evidence produced, the Railways failed to establish that they acquired the land in question in the year 1967. On the other hand, the petitioner and other occupants had produced ample material to show that they have been in occupation for the past more than 30 years and thus rightly claimed adverse possession. It is also contended that the petitioner and other occupants of the land in question made a representation dated 30-8-2004 to the 4th respondent to provide pucca houses under Housing Scheme for Weaker Sections and the same is pending consideration. Hence, the eviction ordered in the meanwhile is arbitrary, illegal and unjustified.

I have heard the learned Counsel for the petitioner in detail.

The common order dated 24-2-2004 passed by the Estate Officer shows that after taking into consideration the evidence produced by both the parties, clear findings were recorded that the petitioner and other occupants could not establish their plea of adverse possession. It was also found that Exs.A-1 to A-3 documents established the title and ownership of the Railways in respect of the land in question and there is absolutely no material to show that the said land belongs to the Municipal Corporation. The said findings are based on proper appreciation of the evidence on record. The learned Additional District Judge dismissed the appeal by a well-reasoned judgment upholding all the findings recorded by the Estate Officer. It was also categorically held that the petitioner could not produce any evidence to establish his right and title to the premises in question.

At the outset, it is to be noted that this Court while exercising the jurisdiction under Article 226 of the Constitution of India does not act as an appellate authority and re-appreciate the evidence on record.

The law is well settled that the scope of judicial review,

particularly a Writ of Certiorari is limited and would be exercised only to correct errors of jurisdiction or to correct errors of law apparent on the face of the record. This Court would interfere by issuing a Writ of Certiorari only where it is found that the order was passed by the Court or Tribunal in violation of principles of natural justice or where the findings are not based on any evidence.

In the case on hand, as already noted above, the petitioner was given ample opportunity to establish his case by the Estate Officer and after considering all the material produced, the Estate Officer concluded that the petitioner has been in unauthorised and illegal occupation. Even the learned Additional District Judge, while deciding the Appeal, passed a well-reasoned order after re-appreciating the material on record. The said conclusions reached by the Estate Officer as well as the learned Additional District Judge are based on evidence on record and in accordance with the settled principles of law. It is not the case of the petitioner that the impugned orders are without jurisdiction. In the circumstances, there is absolutely no justifiable reason to issue a Writ of Certiorari as prayed for.

Accordingly, the Writ Petition is dismissed. No costs.

However, having regard to the facts and circumstances of the case, the petitioner is granted one month time from today to vacate the schedule premises if he is still in possession as on today.

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(G. ROHINI,)

Dated: 18-10-2006
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